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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1949

No. 531

CARPET, LINOLEUM AND RESILIENT FLOOR DECORATORS' UNION, LOCAL NO. 596, AFL, ET AL., *Appellants,*

vs.

THE DAYTON COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 531

THE DAYTON COMPANY, A CORPORATION,
Appellee,

vs.

CARPET, LINOLEUM AND RESILIENT FLOOR DECORATORS' UNION, LOCAL NO. 596, AFL, ET AL.,
Appellants

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

(Minnesota Supreme Court Case No. 34893)

• • • • • • •

Appellee's Statement Opposing Jurisdiction and Motion to Dismiss or Affirm

• • • • • • •

MOTION TO DISMISS OR AFFIRM

The appellee moves the Court to dismiss the appeal herein on the ground that it has no jurisdiction for the following reasons:

1. That the decision of the Supreme Court is sustainable upon non-Federal grounds sufficient to support it.

2. That the Court is without jurisdiction because no substantial Federal question is raised by appeal.

In the alternative, appellee moves this Court to Affirm the judgment of the Supreme Court of the State of Minnesota on the grounds that:

1. It is manifest that the questions as to the constitutionality of Section 3 of Chapter 486, Session Laws of Minnesota for 1947, page 765 (Minnesota Statutes Annotated, Section 179.42) drawn in question are so unsubstantial as not to need further argument.

2. The decision of the Supreme Court of the State of Minnesota that said Section 3 of Chapter 486, Session Laws of Minnesota for 1947, page 765 (Minnesota Statutes Annotated, Section 179.42) is not violative of nor repugnant to the Constitution of the United States is in accord with the decisions of this Court, and there is no need for further argument.

The foregoing motions are filed by appellee pursuant to paragraph 3 of Rule 12 of this Court in response to appellant's Statement as to Jurisdiction and other papers filed by appellants which urge this Court to review on appeal the judgment entered by the Court below.

Statement in Support of Motion to Dismiss or Affirm and in Opposition to Jurisdiction of This Court

I

Statutory Provisions Sustaining Jurisdiction

(Statement as to Jurisdiction, p. 1)

Appellee concedes that if neither its motion to dismiss nor its alternative motion to affirm should be granted, appel-

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lants have the right to take this appeal under Section 1257, Title 28, United States Code.

II

Statute of the State, Validity of Which Is Involved

(Statement as to Jurisdiction, pp. 2 & 3)

Appellee concedes that there was drawn in question before the Supreme Court of Minnesota the validity of Section 3 of Chapter 486, Session Laws of Minnesota for 1947, page 765 (Minnesota Statutes Annotated, Section 179.42), hereinafter referred to as "Section 179.42," as being repugnant to the Constitution of the United States, and that the decision of the Supreme Court of the State of Minnesota was in favor of its validity.

Appellee states further, however, that appellants did *not* draw into question before the Supreme Court of the State of Minnesota the constitutionality of Minnesota Statutes Annotated, Sections 179.06 and 179.11(2). These statutes were construed by the Supreme Court of the State of Minnesota to be applicable to the facts presented, and they constituted separate and sufficient grounds for affirming the judgment of the trial court. The decision is accordingly sustainable on an independent, non-Federal ground, for which reason the appeal should be dismissed. That these sections are not involved in this appeal is conceded by appellants (p. 7, Statement as to Jurisdiction).

III

Date of Judgment and Application for Appeal

(Statement as to Jurisdiction, pp. 3-4)

Appellee does not dispute statements of appellants under this heading.

IV

Nature of Case and Rulings

(Statement as to Jurisdiction, pp. 4 & 5)

Nature of Case

Appellee deems the statement of the nature of the case found on pages 4 and 5 of the Statement as to Jurisdiction to be so incomplete as to fail to adequately apprise this Court of the factual situation. Rather than to extend this statement, appellee adopts, as an adequate statement of the facts, the statement of facts set forth on pages 15, 16, 17, 21, 22 and 23 of the copy of the opinion to the Supreme Court of the State of Minnesota attached to appellants' Statement as to Jurisdiction.

The judgment and decree of the District Court, which was sustained by the Supreme Court of Minnesota, as set forth on page 6 of appellants' Statement as to Jurisdiction, is not complete. Omitting the preliminary recitals, it reads as follows:

> "• • •, it is hereby adjudged and decreed:
>
> "1. That the defendants and each of them have threatened to commit violations of Sections 179.06, 179.11(2), 179.12(3), and 179.42, M. S. A.
>
> "2. That defendants and each of them, and each and every member, agent, officer and representative of said defendant union whether herein specifically named or not, and any and all persons and parties acting through, under or in aid of or in concert with them, or any of them, be and hereby are permanently enjoined and restrained:
>
> "(a) From in any manner, individually or in concert, cooperating in, engaging in, promoting or inducing a strike in connection with work for the plaintiff in the cutting and laying of any carpet, linoleum, tile, or

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other floor covering on jobs or orders with respect to which the measurements for said carpet, linoleum, tile or other floor coverings have been made or taken by persons who are not members of defendant union, or who are not members of any union, if and so long as such strike has as a purpose causing, coercing or inducing the plaintiff to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment, or any terms or conditions of employment of said non-union men; or which strike has as a purpose, causing, or coercing, or inducing the plaintiff to encourage, persuade, require or otherwise cause the said non-union employees of plaintiff to join said defendant union against their will, and

"(b) From striking until they have complied with Section 179.06 of the Minnesota Labor Relations Act.

"(c) That the foregoing order be and hereby is subject to the provisions that no individual member of said defendant union is directed or required to work against his or her will, nor is any member of said union denied the right of quitting his or her employment, and that clause (2) hereof shall not apply in the event of a collective bargaining agreement entered into voluntarily by the plaintiff and the defendant union if it shall hereafter represent the employees of the plaintiff, including the three non-union men herein involved, as a bargaining agent as provided by Section 179.16 of the Minnesota Labor Relations Act" (Minn. S. Ct. Rec. 327-328).

It will be observed from the foregoing judgment and decree, which was sustained by the Supreme Court of Minnesota:

1. That the only action of appellants which the Court restrained was a strike.

2. That such strike was restrained for two specific reasons:

(a) Because such strike was threatened for an unlawful purpose;

(b) Because such strike was threatened without compliance with the methods prescribed by the Statute, Section 179.06, the validity of which statute is not here attacked by appellants.

3. The judgment and decree expressly preserved to individual employees the right to quit their employment.

Section 7 of Chapter 486, Minnesota Session Laws for 1947 (Minnesota Statutes Annotated, Section 179.46), which is a section of the same statute of which Section 179.42 is a part, expressly contains the same limitations as contained in paragraph 2(c) of the judgment and decree, and reads as follows:

> "(179.46) Limitations; federal act. Sec. 7. Nothing in this Act shall be construed as requiring any person to work or perform services against his will for any other person, nor to prohibit a strike, picketing or bannering which is otherwise lawful under the statutes and laws of this state; nothing in this Act shall be construed to apply to the refusal by an employee to enter upon the premises of an employer other than his own employer when the employees of such other employer are engaged in a strike which is not an unfair labor practice, but does not include any person subject to the Federal Railway Labor Act as amended from time to time."

It will be noted that, on page 7 of appellants' Statement as to Jurisdiction, appellants seek to dismiss the importance of paragraph 2(b) of said judgment and decree, which is an independent and non-Federal ground for initially granting the injunction and sustaining it on appeal, by stating that, "The impediment to strike under this part of the injunction may be removed by the service of a strike notice in the manner required by the Minnesota Supreme Court." But the impediment still exists, and, accordingly, so does

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the independent non-Federal ground for sustaining the appeal still exist.

V

Substantiality of Questions Involved

(Statement as to Jurisdiction, pp. 9-12)

Appellants attempt to make it appear that the Federal question involved is substantial by asserting that a violation of said Section 179.42 is a misdemeanor. A violation of Section 3 of Chapter 486, Minnesota Session Laws, 1947 (Section 179.42) is not declared by the Chapter itself to be a misdemeanor, nor is the violation of any section of the Minnesota Labor Relations Act (Minnesota Statutes, 1945, Chapter 179) declared to be a misdemeanor. Minnesota Statutes Annotated, Section 613.78, upon which appellants base their argument, is part of the Minnesota Criminal Code and provides as follows:

> "613.78 Punishment for prohibited acts.
>
> "When the performance of any act is prohibited by statute, and no penalty for the violation of the same shall be imposed in any statute, the doing of such act shall be a misdemeanor."

The Supreme Court of the State of Minnesota has never declared that the performance of any act which is prohibited or declared unlawful by any section of the Minnesota Labor Relations Act shall be deemed a misdemeanor. It is apparent that the State Legislature, when it declared certain of the prohibited acts in the Labor Relations Code to be unlawful, did so in order to permit injunctions against such acts under Minnesota Statutes Annotated, Chapter 185, entitled "Injunctions and Restraining Orders Relating to Labor Disputes," commonly known as the Minnesota Little Norris LaGuardia Act. Section 185.13 of said act, which

was in existence at the time of the enactment of the Minnesota Labor Relations Act and Section 179.42, provides, in substance, that no court shall issue an injunction except after findings to the effect "that unlawful acts have been threatened and will be committed unless restrained. • • •" Minnesota Statutes Annotated, 588.10, to which appellants also refer in this connection, is part of Minnesota Statutes, 1945, Chapter 588, which defines contempts and provides penalties for contempts. One of the acts constituting contempt is, as provided for by Section 588.01, Subdivision 3(3) of said Chapter, is "disobedience of any lawful judgment, order or process of the court." It is obvious that the State Legislature by empowering the courts to order an injunction against certain activities of employers and employees in labor disputes and by authorizing penalties for violations of such orders does not by such legislation declare such unlawful and prohibited acts to be criminal acts. It is equally obvious that the acts of the appellants prohibited by the order and judgment from which appellants appeal are not indefinite and uncertain, and that any penalties imposed would be imposed by virtue of violation of only those acts prohibited by said order and judgment.

It is significant that if appellants' argument were valid as to Section 179.42, it would likewise be valid as to those acts which are prohibited and declared unlawful by Sections 179.06, 179.11(2) and 179.11(10), which constituted an independent ground for the judgment and decree enjoining the threatened strike by appellants, yet these sections are not attacked by appellants as being unconstitutional on that ground.

Appellants argue that the statute, rather than the order and judgment, "contains prohibitions against the exercise of fundamental human liberties beyond those found in any other statute." It would appear that appellants over-emphasize this point by listing numerically the proscribed

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acts without also pointing out in the paragraph containing such list the fact that such acts are proscribed and declared unlawful only when their purpose is "to induce or coerce an employer to persuade or otherwise encourage or discourage his employees to join or refrain from joining any labor union or organization, or coercing such employer's employees to join or refrain from joining any labor union or organization." The restrictions imposed by the statute upon the actions of these appellants, accordingly, are limited in scope, and for the purpose of effectuating and preserving the statutory right of self-determination and self-organization of employees. Appellants fail to mention Minnesota Statutes Annotated, Section 179.10, which is Section 10 of the Minnesota Labor Relations Act and which provides:

> "179.10 Joining labor organizations; uniting for collective bargaining.
>
> "Subdivision 1. Employees' right of self-organization. Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities.
>
> "Subd. 2. Employers associations. Employers have the right to associate together for the purpose of collective bargaining."

The mention made by appellants in the last paragraph on page 10 of their Statement as to Jurisdiction concerning Minnesota Statutes Annotated, Section 179.12(3) is somewhat misleading. Section 179.12(3) reads as follows:

> "179.12. Unfair labor practices by employers.
>
> "It shall be an unfair labor practice for an employer:
>
> "• • •

"(3) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; provided, that this clause shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employees or a labor organization representing the employees as a bargaining agent, as provided by section 179.16;

"• • •"

It is clear that said section *does* prohibit encouraging employees to join a union, except as permitted by the express proviso therein. The appellant union has never been determined to be a labor organization representing the employees as a bargaining agent for an appropriate bargaining unit, which includes the three non-union men, in accordance with Section 179.16. A collective bargaining agreement does not exist between appellee and appellants in such collective bargaining capacity, and there was no closed-shop or union shop agreement. Appellants, in short, did not come within the exceptions contained in the proviso. The judgment and decree affirmed by the Supreme Court of the State of Minnesota enjoined the threatened strike accordingly and unless and until the collective bargaining agreement is entered into voluntarily by appellee and appellant union if it shall hereafter represent the employees of the appellee, including the three non-union men herein involved, as a bargaining agent, as provided by said Section 179.16.

Appellants sum up the question raised on this appeal as follows: May employees be enjoined from striking when the purpose is to induce the employer to do what he has a constitutional right to do, citing *National Labor Relations Board* v. *Va. Electric and Power Company*, 314 U. S. 467, and *Thomas* v. *Collins*, 323 U. S. 516 (p. 11, Statement as to

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Jurisdiction). This argument fails because the Supreme Court of the State of Minnesota specifically found "that the purpose of the strike was to compel the employer to discharge the non-union men or compel them to join the union." This determination is found in paragraph 4 of the opinion of the Supreme Court of Minnesota, reading as follows:

> "The court found that defendants have threatened to commit a violation of §§ 179.06 and 179.11(2) in calling a strike without complying with § 179.06. It is conceded by defendants that the prerequisites to calling a strike under § 179.06 have not been complied with. Defendants contend that no notice to the employer was necessary, for the reason that they are not asking to negotiate an agreement or changes in an existing agreement, or rates of pay or working conditions, but are simply seeking to enforce an oral agreement which they already had. These contentions have been answered adversely to defendants by the court's findings. The answer is to be found in the question itself. What was the purpose of the strike? Obviously, there is only one answer, namely, to compel the employer to discharge the nonunion men or to compel them to join the union. In view of the fact that the union did not have a closed-shop agreement with the employer, it would constitute an unfair labor practice for the employer to do so. To bring about such agreement, if the union wished to negotiate for that purpose, it was necessary to comply with § 179.06. A strike called to compel such acts without compliance with the statute would be an unfair labor practice and unlawful. Consequently, it could be enjoined. The court properly so held."

In short, appellants' argument as to the substantiality of the question which they have proposed to have reviewed is predicated upon questions of fact which were determined against them by the District Court and by the Supreme Court of Minnesota. Such questions of fact

are not subject to review by this Court. The state courts have determined that the threatened strike was not for the purpose of protecting the jurisdiction of appellants' craft or trade, but rather to coerce the employer-appellee to discriminate against the non-union men by either discharging them or compelling them to join the union. In the absence of a closed-shop agreement, and in the absence of complying with Section 179.06, such strike would be an unfair labor practice and unlawful.

The Supreme Court of the State of Minnesota, in essence, was giving effect to the manifest intention of the State Legislature in enacting Section 179.42, namely, to implement the right of self-organization and self-determination guaranteed by Section 179.10 and already implemented in part by the provisions of Section 179.12(3). That the Legislature had the constitutional power to prohibit an interference with or restraint of this right of self-determination was settled by this Court in *National Labor Relations Board* v. *Va. Electric and Power Company, supra.*

Appellants also raise the question, on page 12 of their Statement as to Jurisdiction, as to:

> "whether employees may be prohibited from striking to protect the jurisdiction of their craft or trade where the employer takes part of their work away from them, instructs them not to do this work, and gives it to persons neither skilled in the trade nor apprentices therein."

There is no substance to this question for the reason that the Supreme Court of the State of Minnesota, as above indicated, affirmed the findings of the trial court that the purpose of the strike was to compel the employer "to discharge the non-union men or compel them to join the union."

The acts proscribed by Section 179.42 do not appear to have any greater constitutional guarantee of right than the

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right of free speech or other rights expressly guaranteed by the First and Fourteenth Amendments. That these expressly guaranteed rights may be restrained by the state where the objective or purpose for which such fundamental rights is exercised is unlawful has already been fully answered by this Court in *Giboney* v. *Empire Storage & Ice Company*, 336 U. S. 490, 60 S. Ct. 684.

The final point made by appellants under this heading is that said Chapter 486, Laws of 1947, violates the Fourteenth Amendment because of the exclusion of employees subject to the Federal Railway Labor Act. This question was never raised in the Court below, and is not a subject for review by this Court.

VI

Cases Sustaining Jurisdiction of the United States Supreme Court

(Statement as to Jurisdiction, p. 13)

Appellee takes no exception to cases cited under subparagraphs 1 and 2. Cases cited under subparagraphs 3 and 4, however, do not appear to go to the question of the jurisdiction of this Court, but, rather, pertain to the disposition of the case if jurisdiction be taken by this Court.

Conclusion

Appellee aserts that its motion to dismiss should be granted for the following reasons:

1. That the decision of the Supreme Court of the State of Minnesota is sustainable upon non-Federal grounds sufficient to support it, it appearing from the opinion of the Court and as above pointed out under paragraph IV, that the injunction decree was sustained and affirmed by the Supreme Court of Minnesota upon the independent non-Federal ground that appellants have failed to comply with Minne-

sota Statutes 179.06 and 179.11(2), the constitutionality of which sections is not challenged on this appeal.

2. That the Court is without jurisdiction because no substantial Federal question is raised by this appeal, it appearing that in line with the decisions of this Court, namely, *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684; *Lincoln Federal Labor Union* v. *Northwest Iron and Metal Company*, 335 U. S. 530, 69 S. Ct. 254; *International U. A. W. A.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 69 S. Ct. 516; *A. F. L.* v. *American Sash & Door Company*, 335 U. S. 538, 69 S. Ct. 258; *Whitaker* v. *North Carolina*, 335 U. S. 525, 69 S. Ct. 251; *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807; *Algoma Plywood & Veneer Co.* v. *Wisconsin E. R. Board*, 336 U. S. 301, 69 S. Ct. 584; *Hotel & Restaurant Employees' Int'l Alliance* v. *Wisconsin E. R. Board*, 236 Wis. 329, 294 N. W. 632, 295 N. W. 634, affirmed 315 U. S. 437, 62 S. Ct. 706, the Supreme Court of Minnesota correctly held that said Section 179.42 is not violative of the Fourteenth Amendment to the Constitution of the United States, as follows:

> "There is no constitutional reason why a state cannot provide laws for enjoining a strike which has for its purpose a plan to compel or coerce an employer to violate the law any more than there is for enjoining picketing which has the same plan for its purpose.
>
> "If the states have the constitutional right to completely forbid a closed-shop contract, there should be no constitutional obstacle to a law such as ours, which prohibits discrimination against nonunion employes, in the absence of an agreement requiring all employes of a unit to belong to a union. That there has been no violation of the constitutional guaranty of free speech in the case now before us is obvious. The employer's labor relations representative even arranged a meeting between the nonunion men and the representative of the labor union. Persuasion on the part of the

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union's representative was ineffective, and the employes involved chose to exercise their legal right to refrain from joining the union. That there has been no deprivation of the right of assembly or the right to petition seems equally obvious. We therefore hold that § 179.42, insofar as the acts enjoined in this case are concerned, does not violate Minn. Const. art. 1, § 3, or U. S. Const. Amend. XIV" (pp. 23-24, copy of opinion of Minnesota Supreme Court attached to Statement as to Jurisdiction);

and correctly held that said Section 179.42 is not violative of the Thirteenth Amendment of the Constitution of the United States, as follows:

"With respect to a violation of the Thirteenth Amendment, the United States Supreme Court, in Int'l Union, U. A. W. A., v. Wisconsin E. R. Board, said (336 U. S. 251, 69 S. Ct. 520, — L. Ed. —):

> " 'The Union contends that the statute as thus applied violates the Thirteenth Amendment in that it imposes a form of compulsory service or involuntary servitude. However, nothing in the statute or the order makes it a crime to abandon work individually (compare Pollock v. Williams, 322 U. S. 4) or collectively. Nor does either undertake to prohibit or restrict any employee from leaving the service of the employer, either for reason or without reason, either with or without notice. The facts afford no foundation for the contention that any action of the State has the purpose or effect of imposing any form of involuntary servitude.'

"The same is true of our statute and the court's injunction.

"Insofar as the United States constitution is concerned, we are bound by the above decisions of the Supreme Court of the United States. The term 'involuntary servitude,' as used in Minn. Const. art. 1, § 2, carries with it the same meaning as 'involuntary servi-

tude' in U. S. Const. Amend. XIII. Our decision construing our constitution should be consistent with the construction placed on a similar provision of the United States constitution in the foregoing cases by the Supreme Court of the United States.

"We therefore hold that § 179.42 does not violate Minn. Const. art. 1, § 2, or U. S. Const. Amend. XIII" (p. 27, copy of opinion of Supreme Court of Minnesota attached to Statement as to Jurisdiction).

Appellee further submits that if its motion to dismiss should be denied, that its alternative motion to affirm the judgment of the Supreme Court of Minntsota should be granted on the grounds that:

1. It is manifest that the questions as to the constitutionality of Section 3, Chapter 486, Session Laws of Minnesota for 1947, page 765 (Minnesota Statutes Annotated, Section 179.42) drawn in question are so unsubstantial as not to need further argument inasmuch as the questions raised by appellants have been decided by this Court adversely to appellants' contentions.

Giboney v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684; *Lincoln Federal Labor Union* v. *Northwest Iron and Metal Company*, 335 U. S. 530, 69 S. Ct. 254; *International U. A. W. A.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 69 S. Ct. 516; *A. F. L.* v. *American Sash & Door Company*, 335 U. S. 538, 69 S. Ct. 258; *Whitaker* v. *North Carolina*, 335 U. S. 525, 69 S. Ct. 251; *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807; *Algoma Plywood & Veneer Co.* v. *Wisconsin E. R. Board*, 336 U. S. 301, 69 S. Ct. 584; *Hotel & Restaurant Employees' Int'l Alliance* v. *Wisconsin E R. Board*, 236 Wis. 329, 294 N. W. 632, 295 N. W. 634, affirmed 315 U. S. 437, 62 S. Ct. 706.

2. The decision of the Supreme Court of the State of Minnesota that said Section 3 of Chapter 486, Session Laws

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of Minnesota for 1947, page 765 (Minnesota Statutes Annotated, Section 179.42) is not violative of nor repugnant to Amendments Thirteen and Fourteen of the Constitution of the United States is in accord with the above mentioned decisions of this Court, and there is no need for further argument.

Dated this 22nd day of December, 1949.

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